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DIGEST OF WATER POLLUTION CONTROL LEGIS-
LATION: MONTANA

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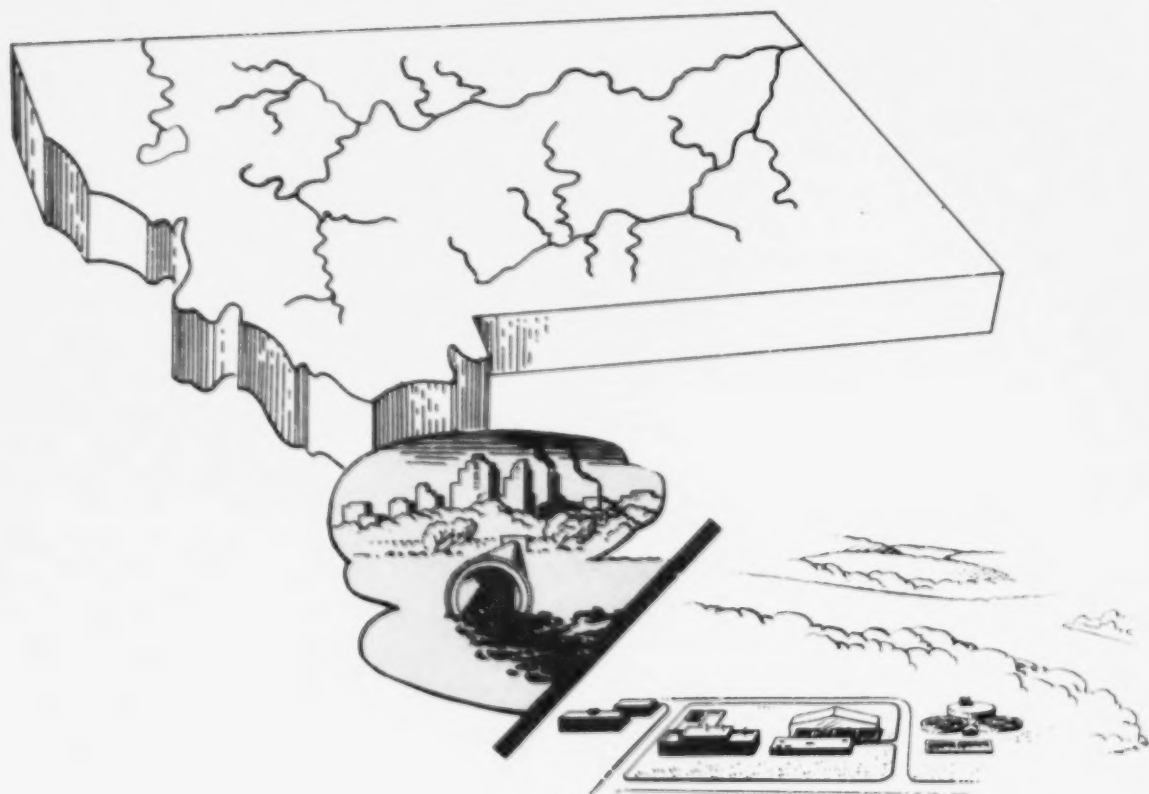
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Digest of WATER POLLUTION CONTROL LEGISLATION ... Montana



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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF MONTANA WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The 1955 Legislature of Montana enacted a comprehensive water pollution control law and created a Water Pollution Council with overall responsibility for carrying it into effect. However, the responsibility for administering the provisions of the Act is placed in the State Board of Health under the supervision of the Council with the Board retaining authority on matters relating to public water supplies of the State (1957 Cum. Supp., secs. 69-1326, 69-1329; secs. 69-1301-1320).^{1/}

Where waters have been classified or standards established pursuant to the Act, any discharge which is not in accord with such classification or standards is deemed to be pollution (1957 Cum. Supp., sec. 69-1328(e)).

The Act does not apply to any waters of the State which were not reasonably suitable for domestic or public water supply for human consumption at the time of its passage (1955) (1957 Cum. Supp., sec. 69-1328(1)).

II. ADMINISTRATIVE ORGANIZATION

A. Water Pollution Council

1. Composition and organization

The Council consists of seven members, namely, the Executive Officer of the State Board of Health, the State Fish and Game Warden (Director, State Fish and Game Department), the State Engineer, and four members appointed by the Governor; two of whom represent industry, one agriculture, and one municipal government. The Council elects a Chairman from among its members. It holds at least two regular meetings annually. Special meetings can be called by the Chairman and must be called by him upon written request

^{1/} Citations in this digest refer to the Revised Codes of Montana (1947) and the 1957 Cumulative Supplement thereto, unless otherwise indicated.

of two or more members. A majority of the members of the Council constitute a quorum.

Each member can designate a deputy to perform his duties, by filing an order with the Secretary of the Council. The Secretary of the Council must be a member of the public health engineering staff of the State Board of Health and is designated by the Executive Officer of the Board (1957 Cum. Supp., Sec. 69-1329(b)(c)).

2. Powers and duties

a) Development of comprehensive plan

The Council is authorized to develop a comprehensive program for the prevention, control and abatement of pollution of the waters of the State and, from time to time, to review and modify such program for the guidance of the Board. It is authorized to formulate the standards of water purity and classification of waters. In such formulation, consideration is to be given to the economics of waste treatment and prevention (1957 Cum. Supp., sec. 69-1330(c)(e)). Public notice of hearings must be given before the Council can proceed with the classification of and the establishment of standards of purity for the waters of the State (1957 Cum. Supp., sec. 69-1334).

b) Enforcement

Orders of the Council or Board become final thirty days after notice thereof unless, within such thirty days, the person affected applies for a rehearing with the Council. The Council must accord such person a rehearing. A record of the rehearing together with findings of fact is made and filed with the Council. The Council is authorized to administer oaths, examine witnesses and issue notice of hearings and subpoenas requiring

the testimony of witnesses and the production of evidence enforceable by application to the District Court. The Council, after the rehearing, can affirm, modify or reverse its original order. Such new order becomes final thirty days after service upon the appellant, unless within such time the appellant appeals to the District Court.

The matter is tried de novo in the District Court. The Court determines whether the Council's findings are reasonable under all the circumstances of the case and whether they should be sustained. The District Court's decision can be appealed to the Supreme Court of the State as provided in civil cases. Upon the final determination of the judicial proceedings, the Council enters an order in accordance with such determination (1957 Cum. Supp., sec. 69-1335).

Anyone violating any final order of the Council or Board can be enjoined by the Council (1957 Cum. Supp., sec. 69-1336, 1338).

Within thirty days after an order of the Council or Board becomes final or after the date judgment affirming such an order is entered, the person affected must initiate steps necessary to comply with it (1957 Cum. Supp., sec. 69-1337).

c) Conduct of studies, investigations and research.

The Council is authorized to determine ways of eliminating all substances which pollute the State's waters and to determine methods of preventing pollution that is detrimental to agriculture, recreational uses, the public health or the health of animals, fish, or aquatic life, or the industrial development of the State (1957 Cum. Supp., sec. 69-1330(a)).

d) Administrative powers

The Council is authorized to adopt rules, regulations and methods of procedure for the guidance of the Board of Health in the administration of the Act. It may hold hearings necessary for the proper administration of the Act, utilize staff services of the Board, and exercise all powers necessary to carry out the purposes of the Act (1957 Cum. Supp., sec. 69-1330).

The Council may require the assistance of other State departments and institutions and they are directed to cooperate with it (1957 Cum. Supp., sec. 69-1339).

3. Preservation of existing rights and remedies

The Act is to be considered as providing remedies to prevent, control and abate water pollution and nothing contained therein is to be construed to abridge rights of action nor as estopping owners of water rights in exercising their rights under the common or statutory law to suppress nuisances or abate pollution. All laws inconsistent with the Act are repealed, provided that it does not impair the existing powers and duties of the State Board of Health, except that the Water Pollution Control Act of 1949 is repealed (1957 Cum. Supp., secs. 69-1340, 69-1341).

4. Statement of policy; severability clause

The Act declares it to be the public policy of the State to conserve its waters and to protect, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for agricultural, industrial, recreational and other legitimate beneficial uses, to provide a comprehensive program for the prevention, abatement and control of water pollution, means for the enforcement of such program, and to provide for cooperation with agencies of other States and the Federal government in carrying out these objectives (1957 Cum. Supp., sec. 69-1327).

The Act contains a severability clause (Laws of Montana, 1955, Ch. 142, sec. 17).

B. State Board of Health

1. Composition and organization

The Board consists of seven members appointed by the Governor and confirmed by the Senate for 7-year terms; three of whom must be medical doctors, one a dentist, and three lay persons who have demonstrated interest in the field of public health. The Board elects from its members a President, Vice President, Secretary and such other officers as it may determine and appoints an executive officer who may also be elected secretary. Regular meetings of the Board are held not less than once every two months, and special meetings may be called by the President, the Executive Officer, or by a majority of the members. A majority of the members constitute a quorum (Sec. 69-102.)

2. Powers and duties

a) General authority

The Board is charged with the responsibility of administering, under the supervision of the Council, the Water Pollution Act (1957 Cum. Supp., Sec. 69-1329(c)). The Board also exercises general supervision of all inland waters used as sources of water supply for domestic purposes (Sec. 69-1301-1320).

b) Issuance of permits and review of plans and specifications

The Board is authorized to review all plans and specifications for (1) the construction and operation of new sewerage systems, disposal systems and treatment works, or modifications thereof, (2) modification of manufacturing or other business establishments, the operation of which

would cause a substantial increase in waste discharges or otherwise alter the physical, chemical or biological properties of the waters of the State, or (3) new outlets for the discharge of wastes into any sewerage system or otherwise into the waters of the State subject to the rules and regulations of the Council (1957 Cum. Supp., sec. 69-1331(d)).

The Board has authority to issue, modify or deny permits for the collection and discharge of wastes (1957 Cum. Supp., sec. 69-1331(e)).

c) Enforcement

It is unlawful for anyone to construct or operate the facilities mentioned in Section B2(b) above without first securing a permit as the Board may by regulations require (1957 Cum. Supp., sec. 69-1332(a)(b)).

The Board has authority to issue, modify or revoke orders for the abatement of pollution and to require the adoption of such remedial measures, including the construction of new disposal systems or treatment works or modification of existing systems, as it is directed by the Council (1957 Cum. Supp., sec. 69-1331(c)).

d) Conduct of studies, investigations and research

The Board is empowered to conduct such studies, investigations, research and demonstrations relating to water pollution and the causes, prevention, control and abatement thereof as it deems necessary (1957 Cum. Supp., sec. 69-1331(h)).

e) Cooperation with other public and private agencies

The Board can advise, consult and cooperate with other agencies of the State, other States and the Federal government and with affected groups, subdivisions and industries, in the formulation of the comprehensive program. It can collect and disseminate information relating to

water pollution and the prevention, control and abatement thereof (1957 Cum. Supp., sec. 69-1331(f)(g). The Board is authorized to accept and administer loans and grants from the Federal government and any other source for carrying out any of its functions (1957 Cum. Supp., sec. 69-1331(b)).

f) Administrative powers

The Board is authorized to issue orders and permits. It has the power, through its representatives, to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to pollution of any waters of the State (1957 Cum. Supp., secs. 69-1331(c)(e), 69-1333).

III. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

It is a misdemeanor to put any dead animal into any lake, river, creek, pond, or reservoir (Sec. 69-712).

It is a misdemeanor to take or catch fish with poisonous substances (Sec. 26-332).

It is unlawful to use dynamite or other explosives for the purpose of catching or killing fish (Sec. 26-335).

It is unlawful for anyone operating a sawmill to dump waste from such operation into any waters of the State (Sec. 26-339).

The depositing or dumping of coal slack from a mine operation into any stream containing fish or water which is used for domestic purposes or irrigation is a misdemeanor (Sec. 94-3552).

It is unlawful to put the carcass of any dead animal or offal into any waters of the State or on the banks of a stream from which water is used for domestic purposes; or to keep any animals housed on the borders of such waters so that such waters become polluted by reason thereof (Sec. 94-3542).

It is unlawful for anyone wilfully to poison any well, spring, or reservoir of water (Sec. 94-35-255).